

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 226 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANORAMYA RESORTS & HOTELS PVT.LTD.

Versus

SHANKARJI GANDAJI

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Appearance:

MR MB GANDHI for Petitioners

NOTICE SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/07/98

ORAL JUDGEMENT

1. The appellants-plaintiffs have filed Special Civil Suit No. 154 of 1995 (New S.C.S. No. 345 of 1995) in the Court of the Ld. Civil Judge (S.D.) Gandhinagar (Ahmedabad Rural) for obtaining specific performance of agreement to sell the suit property and for other reliefs. In that suit the appellants moved interim injunction application for obtaining interim

injunction against the defendants from transferring by sale or in any other manner the suit property till the final disposal of the suit. The learned trial Judge even before the defendants filed their reply passed the impugned order dated 4/3/1997 rejecting the interim injunction application and vacating the status-quo with regard to interim relief earlier granted by the trial Court. The plaintiffs have filed the present appeal against the said order.

2. I have heard the learned advocate for appellants. He has sought leave to delete respondent no.2, who has died during the pendency of this appeal. Leave to delete respondent no.2 is hereby granted. Respondents nos. 1 and 3 have been served, but they have chosen not to appear before this Court. It might be noted that the suit is for specific performance of agreement to sell the immovable property in question. It is not understandable how the trial Court even before the defendants filed affidavit-in-reply vacated the status-quo which was granted at an earlier point of time. The relief for damages would be an alternative relief. The Court will have to consider the question with regard to granting of main relief of specific performance only at the time of trial. Hence, it is clear that the learned trial Judge has committed error in vacating the status-quo while rejecting the interim injunction application. It is no-doubt true that it will be open to the defendants to move an appropriate application before the trial Court as and when occasion arises for transfer or for alienation of the immovable property in question during the pendency of the suit. But even in that case the trial Court will have to decide such an application after hearing both the parties and considering the merits of the matter. Under such circumstances and in view of the facts of the case, following order is passed :-

The defendants will maintain status-quo with regard to transfer and/or alienation of the immovable property in question till the final disposal of the suit. It would be open to the defendants to move an appropriate application before the trial Court in case they need to sell or transfer the property in question before the suit is finally decided. As and when such application is moved, the trial Court shall decide the same after hearing the parties, in accordance with law.

This appeal is accordingly allowed with no order as to cost.

**\*\*PVR\*\*** ao22697j.